

THE CULTURE BILL, 2019
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THE CULTURE BILL, 2019

A Bill for

AN ACT of Parliament to give effect to Article 11 (3) (a) of the Constitution; to provide for the protection and promotion of culture and the cultural heritage of communities; and for connected purposes—

ENACTED by the Parliament of Kenya as follows

PART I—PRELIMINARY

Short title. 1. This Act may be cited as the Culture Bill, 2019.

Interpretation. 2. In this Act unless the context otherwise requires—

“art” means the physical manifestation of the internal creative impulse influenced by culture and expressed, in the form of literature, performing arts, culinary arts, media arts, or visual arts;

“Board” means the Board of the Council appointed under section 23 (1);

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to culture;

“community” means a culturally homogeneous and consciously distinct group of people who share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or mode of livelihood or language;
- (c) geographical space;
- (d) ecological space; or
- (e) community of interest;

“community of interest” means the possession or enjoyment of common rights privileges or interest and living in the same place or having some apparent association;

“Council” means the National Council for Culture established under section 20;

“cultural property” means property which, on religious or secular grounds, is specifically designated as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories; rare collections, products of archeological excavations, elements of artistic or historical

monuments, objects of ethnological interests, original works of art and engravings, rare manuscripts, archives and articles of furniture and musical instruments;

“cultural expression” means those expressions that result from the creativity of individuals, groups and societies and that have cultural content and may communicate a cultural symbolic meaning or convey a cultural value;

“culture” means the set of distinctive spiritual, material, intellectual and emotional features of a community or a social group, and includes the lifestyle, social interactions, value systems, traditions and beliefs;

“cultural heritage” means—

- (a) tangible cultural heritage including—
 - (i) movable cultural heritage;
 - (ii) immovable cultural heritage; and
 - (iii) underwater cultural heritage;
- (b) intangible cultural heritage;
- (c) natural heritage including natural sites with cultural aspects such as cultural landscapes, physical, biological or geological formation; or
- (d) heritage in the event of armed conflict;

“cultural industries” means an industry that produces and distributes goods and services centred around tangible or intangible artistic and creative outputs such as texts, symbols and images;

“cultural practitioner” means a person who manifests any cultural knowledge and skills especially in regard to traditional and customary practices of a particular ethnic or other cultural group;

“intangible cultural heritage” means the practices, representations, expressions, knowledge, skills and cultural spaces associated with a community, social group or individual and recognized as part of the community, social group or individual’s cultural heritage;

“national expressions” means expressions that have cultural content with national resonance that result from creativity of individuals, groups or societies;

“prior informed consent” means the giving of, by the prospective user, complete and accurate information, and based on that

information, the prior acceptance, by the concerned communities, to the use of their cultures, cultural heritage and cultural property;

“protection” means a measure aimed at, adopted or implemented for the promotion, preservation, safeguarding and enhancement of cultures, cultural heritage and expression; and

“safeguarding” means any measure taken by a county, community, social group or individual, aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

Object and purpose of the Act.

3. The object and purpose of this Act are to—

- (a) give effect to Article 11 of the Constitution;
- (b) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
- (c) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and
- (d) provide a framework to guide national cultural development.

Guiding principles.

4. (1) In the performance of functions and exercise of powers under this Act, State organs, State officers, other public officers and any other persons shall—

- (a) be guided by the national values and principles set out in Articles 10, 27, 201 and 232 of the Constitution; and
- (b) give equal recognition, dignity and respect to all cultures, including cultures of minorities or marginalized peoples.

(2) Notwithstanding the provisions of this Act, cultural activities, expressions and practices shall not be inconsistent with the Bill of Rights set out in Chapter Four of the Constitution.

PART II—MANAGEMENT OF CULTURE

Role of the Cabinet Secretary.

5. (1) The Cabinet Secretary shall be responsible for—

- (a) development of national policies and regulations and standards on cultures and cultural heritage and expressions;
- (b) promotion of the diverse cultures, cultural heritage and cultural expressions including protection, safeguarding,

preservation, conservation and rehabilitation of cultures, cultural heritage and cultural expressions;

- (c) monitoring compliance with standards and regulations concerning culture and cultural heritage;
- (d) management of national cultural institutions;
- (e) prescribing regulations and standards to guide cultural databases and for development of county cultural facilities and activities;
- (f) prescribing regulations and standards to guide the development of cultural facilities and activities;
- (g) implementing bilateral and multilateral agreements on culture;
- (h) promoting national values, social cohesion and national identity; and
- (i) performing any other function as may be necessary for the purposes of this Act.

Role of county governments.

6. County governments shall—

- (a) promote, protect and manage cultural activities and facilities at the county level in line with the national policy;
- (b) promote, protect and manage cultural activities and facilities at the county level;
- (c) enact county policies and laws for the promotion of cultural activities and facilities;
- (d) promote cultural activities, public entertainment and infrastructure for cultural heritage and cultural expression at the county level; and
- (e) develop and manage a county database of cultural activities.

Establishment of cultural database.

7. (1) The Cabinet Secretary, in consultation with county governments, shall establish and maintain a database on culture and heritage including a database of registered cultural practitioners, groups and associations.

(2) The Cabinet Secretary shall, in consultation with county governments, develop a system for collecting and preserving information on culture and cultural heritage.

(3) The Council shall prescribe the standards for compatibility with the national database and data to be submitted by county

governments for the national database of culture and cultural heritage.

Access to
information.

8. (1) Any person shall have the right to the information held in the national database of culture and cultural heritage:

Provided that it is not information protected by this Act or any other written law.

(2) A person who requires a copy of the information in the database may be given such a copy after the payment of a reasonable fee as may be prescribed by regulations made under this Act.

Compensation
for use of culture
and cultural
heritage.

9. (1) The Cabinet Secretary shall, in consultation with relevant stakeholders and county governments, establish mechanisms for the determination and payment of compensation or royalties to communities for the use of the communities' culture and cultural heritage.

(2) The determination of compensation or royalties shall be guided by, among other things—

- (a) the impact of the culture or cultural heritage on the economy of the community;
- (b) the economic value of the culture or cultural heritage;
- (c) the cultural value of the culture or cultural heritage;
- (d) whether or not the culture or cultural heritage shall be used continuously or periodically;
- (e) whether or not the culture or cultural heritage will be subject to derivative works and the type of ownership of the derivative works;
- (f) the type and amount of investment by a State organ in the culture or cultural heritage;
- (g) the effect of the use of the culture or cultural heritage on the environment; and
- (h) the potential for large scale use of the culture or cultural heritage.

(3) The share of the royalties or compensation between the two government levels, the communities and individuals shall be prescribed by the Cabinet Secretary in Regulations.

(4) In establishing mechanisms under subsection (1) the Cabinet Secretary shall—

- (a) establish a register cultural property;

- (b) establish a register cultural practitioners, groups and associations; and
- (c) prescribe regulations to combat illicit trafficking of cultural property.

(5) The Cabinet Secretary shall, in consultation with the departments responsible for industrial property and copyright, develop guidelines for the payment of compensation or royalties to the national or county governments, as the case may be, and to, communities, social groups and individuals for the use of cultural property, knowledge or heritage.

Exceptions and limitations to compensation for use of culture and cultural heritage.

10.(1) Notwithstanding the provisions of section 9, the mechanisms for compensation for the use of culture and cultural heritage may, in the public interest, exempt from or limit the requirement to compensate for use of a culture or cultural heritage—

- (a) where the exemption or limitation does not restrict or impede the normal usage, development, exchange, dissemination or transmission of the culture or cultural heritage by the members of the community according to the community's norms;
- (b) where the exemption or limitation is for the purposes of non-commercial use of the culture or cultural heritage including for teaching, research, exhibition, the reporting of current events and during judicial determination; or
- (c) where the exemption or limitation is for the purposes of making a recording or reproduction of the culture or cultural heritage in a public archive or inventory for safeguarding.

(2) A person who intends to use a culture or cultural heritage shall obtain the prior informed consent of the owner or owners of the culture or cultural heritage and acknowledge their ownership of the culture or cultural heritage and the geographical place where the culture or cultural heritage is practiced or occurs.

(3) A person who uses or intends to use a culture or cultural heritage shall do so in a manner that is compatible with fair practice, and is not offensive or derogatory to the owner or owners of the culture or cultural heritage.

Export, import and transfer of inventoried cultural property.

11.(1) A person, community or social group whose cultural property has been entered in national database of culture and cultural heritage, and wishes to loan, export, import and transfer such property locally or internationally, shall apply to the Cabinet Secretary in the prescribed form for approval.

(2) In determining an application under this section, the Cabinet Secretary shall have regard to—

- (a) the security of the cultural property;
- (b) the spiritual, cultural or sentimental value of the cultural property;
- (c) the fragility of the cultural property;
- (d) the rarity of the cultural property;
- (e) the cultural property's economic value;
- (f) whether or not the cultural property is insured;
- (g) the loaning period;
- (h) whether the cultural property has any prescribed restrictions placed on it; and
- (i) international treaties or conventions relating to culture or cultural heritage which Kenya has ratified.

(3) The Cabinet Secretary shall, if he or she approves the loan, export, import or transfer of the cultural property, issue a certificate of authorisation in the form prescribed by regulations made under this Act.

(4) A person shall not export out of Kenya any cultural property which has been unlawfully acquired or recovered.

Application to
conduct research.

12.(1) Notwithstanding any approval, permit or license granted under any other written law, a person who desires to conduct research regarding any cultural property that has been entered in the national database of culture and cultural heritage shall apply to the Cabinet Secretary in the prescribed manner, and the application shall be accompanied by such information or documentation as the Cabinet Secretary may prescribe.

(2) The Cabinet Secretary shall consult the owner of a cultural property before the relevant authority makes a determination regarding an application under this section.

Application for
registration.

13.(1) A person who wishes to register a property or person as a cultural property or entity, as the case may be, under this Act, shall apply to the county government or the Cabinet Secretary in the prescribed manner:

Provided that an application made to the Cabinet Secretary shall only be done after the property or person, as the case may be, has been registered by a county government.

(2) An application under subsection (1) shall be accompanied by such information or documentation as may be prescribed by regulations made under this Act.

(3) The county government or the Cabinet Secretary, as the case may be, shall, upon payment of the prescribed fees, register the property or person as cultural property where, after consideration of an application under subsection (1) and after such investigation and enquiry as may be necessary, the county government or the Cabinet Secretary, as the case may be, is satisfied that—

- (a) the property in respect of which the application is made—
 - (i) historically belongs to the community, social group or individual seeking registration;
 - (ii) is not the subject of controversy regarding ownership;
 - (iii) complies with identification criteria set by the Cabinet Secretary; or
 - (iv) is of cultural interest to more than one social group and an agreement has been reached by the interested groups regarding registration;
- (b) the person is engaged in cultural development or the arts; and
- (c) registration of such property is not contrary to public interest.

(4) The Cabinet Secretary or the county government, as the case may be, shall make regulations to guide the registration process under this section at the national government level or the county government level, as the case may be.

(5) The Cabinet Secretary shall consult the relevant county government before registering a property or a person under this Act.

Refusal to register.

14. Where the Cabinet Secretary or county government refuses to register a property or institution under section 11, the Cabinet Secretary or county government shall provide the applicant, in writing, with the reasons for such refusal.

Cancellation of registration.

15. (1) The Cabinet Secretary or county government may cancel the registration of a cultural property if the Cabinet Secretary or county government is satisfied that—

- (a) the holder of a registered cultural property has, in connection with the registration, contravened or failed to comply with a condition relating to the registration;
- (b) it is contrary to the public interest that such cultural property

to remain registered; or

- (c) the applicant gave false or misleading information to obtain registration of the property.

(2) Before the registration of a cultural property is cancelled, the Cabinet Secretary or the county government shall notify in writing the holder of the registered cultural property of the intention to cancel the registration, specifying the grounds for the intended cancellation in the notification, and invite the holder to make representations in respect of the intended cancellation.

Validity of registration.

16. The register of cultural property and the certificate of registration issued in respect of the registration of a cultural property shall lapse on the cancellation of registration under section 13.

Recognition and promotion of cultural expressions by public entities.

17. The Cabinet Secretary shall develop regulations to determine the criteria for the recognition and promotion of cultural expressions as national expressions.

Protection of cultural heritage and expressions.

18. (1) The Cabinet Secretary shall prescribe, by notice in the *Gazette*, cultural property that shall not be sold or exported.

(2) The Cabinet Secretary shall develop regulations for the promotion and protection of endangered cultural expressions and cultural heritage.

(3) A person who discovers an archaeological heritage shall not interfere with it:

Provided that a county government has permitted that person to disturb that archaeological heritage and the Cabinet Secretary has issued that person with a license.

(4) The Cabinet Secretary and the county government shall not approve any activity or development to be undertaken in an area where there is or might be a cultural heritage if appears that the activity or development shall unreasonably endanger or damage the cultural heritage.

Seizure and disposition of tangible cultural heritage.

19. (1) A tangible cultural heritage shall be subject to seizure if—

- (a) it has been recovered without a valid permit;
- (b) it has been stolen, imported or exported without a permit; or
- (c) unlawfully transferred to the ownership of another person.

(2) A seized cultural heritage under this Act shall be registered,

protected and stabilised.

PART III—NATIONAL COUNCIL FOR CULTURE

Establishment of
the Council.

20. (1) There is established a council to be known as the National Council for Culture.

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or others acquiring, holding, charging, or disposing of movable and immovable property; and
- (c) doing or performing all such other acts or things as may be necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the
Council.

21. The Council shall—

- (a) advise the Cabinet Secretary on matters relating to culture and arts;
- (b) build capacity and create awareness on matters concerning culture and cultural heritage and expressions;
- (c) ensure the registration of cultures, cultural expressions, cultural heritage and cultural associations in the counties;
- (d) seek restitution and restoration of stolen cultural properties;
- (e) promote indigenous languages;
- (f) conduct and facilitate civic education on issues relating to culture, cultural heritage and cultural expressions;
- (g) conduct research relating to culture, cultural heritage and cultural expressions as the Council may determine;
- (h) promote culture, cultural heritage and cultural expressions including by making grants as prescribed in regulations;
- (i) register arts associations, culture associations, federations and professional artists;
- (j) develop a system to guide the development of a database of cultures and cultural heritage as prescribed in regulations;
- (k) develop, manage and maintain the integrated national

database on culture, cultural heritage and expressions;

- (l) issue certificates, permits or licences of imports and exports of cultural property and cultural heritage;
- (m) develop mechanisms for the verification and determination of ownership claims or cultural properties;
- (n) build capacity in, and offer advice on, matters relating to culture, cultural heritage and cultural expressions to the Cabinet Secretary or the county governments;
- (o) develop and implement strategies for the enhancement of international market access for cultures, cultural heritage and cultural expressions;
- (p) promote and foster the appreciation, revival and development of Kenyan cultures for national identity and consciousness;
- (q) promote the viability of Kenyan cultures and cultural heritage through the recognition of cultural and creative talents and the promotion of cultural and art festivals;
- (r) promote linkages between culture and education through the transfer of skills to cultural practitioners for the development of the creative cultural industries sector;
- (s) foster networking between cultural practitioners and cultural institutions at the national, regional and international level;
- (t) mobilise resources for cultural development;
- (u) oversee the documentation, promotion and protection of endangered cultures and cultural heritage within six months of the commencement of this Act; and
- (v) perform such other functions as may be assigned to the Council under this Act or any other written law.

Headquarters of
the Council.

22. (1) The headquarters of the Council shall be in Nairobi.

(2) The Council shall ensure access to its services in all parts of Kenya.

Board of the
Council.

23. (1) The management of the Council shall vest in a Board.

(2) The Board shall consist of a chairperson appointed by the President and—

- (a) the Principal Secretary in the Ministry responsible for matters relating to culture or a representative;

- (b) a representative of the Council of County Governors; and
- (c) five other members, nominated by cultural organizations and appointed by the Cabinet Secretary.

(3) The Chief Executive Officer who shall be the Secretary to the Council.

(4) The members appointed under subsection (2) (c) shall be nominated by cultural organisations in literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.

(5) In appointing the members of the Council, the Cabinet Secretary shall take cognizance of the provisions of the Constitution regarding gender, youth, persons with disabilities, marginalized communities, and ethnic and other minorities.

(6) The Cabinet Secretary shall prescribe in Regulations how the nomination of persons under subsection (2) (c) shall be undertaken.

(7) Two of the members appointed under subsection (2) (c) shall be appointed at least six months after the appointment of the other members.

Appointment of the chairperson or member of the Board.

24.(1) A person shall be qualified for appointment as the chairperson of the Board of the Council if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in a field relevant to culture, cultural heritage or cultural expressions from a university recognized in Kenya;
- (c) has at least seven years' experience in the relevant field;
- (d) has at least seven years' experience in governance or management; and
- (e) satisfies the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Board of the Council if that person—

- (a) is a citizen of Kenya;
- (b) has at least five years' experience in the relevant field; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as a member of the Board of the Council if such person—

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (d) is a member of Parliament or a member of a county assembly;
- (e) has been removed from any public office for contravening the provisions of the Constitution or any other written law;
- (f) has not met his or her legal obligations relating to taxes or other statutory obligations; or
- (g) is a public officer within the meaning of the Public Officer Ethics Act, 2003.

No. 4 of 2003.

Vacancies in the Board.

25. The office of the chairperson or a member of the Board shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President in the case of the chairperson or the Cabinet Secretary in the case of a member appointed under section 21 (2) (c);
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (d) ceases to hold office on the expiry of his or her term;
- (e) the holder is absent from three consecutive meetings of the Board of the Council without good cause;
- (f) is removed from office on any of the following grounds—
 - (i) violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform the functions of the office arising out of physical or mental incapacity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

Powers of the Board.

26. The Board shall have all powers necessary for the proper management of the Council.

Meetings of the Board.	27. The conduct and regulation of the business and affairs of the Board shall be as provided for in the Schedule to this Act but subject thereto, the Board shall regulate its own procedure.
Committees of the Board.	28. The Board may establish committees consisting of members of the Board and assign such responsibilities to the committees as it may consider necessary for the performance of its functions.
Delegation by the Board.	29. The Board may by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.
Remuneration of the members of the Board.	30. Members of the Board shall be paid such remuneration and allowances as the Cabinet Secretary may, on the advice of the Salaries and Remuneration Commission, determine.
Chief Executive Officer.	31. (1) There shall be a chief executive officer of the Council who shall be appointed by the Board through a competitive process. (2) A person shall be qualified for appointment as the Chief Executive Officer if such person— (a) has a degree in social sciences from a university recognised in Kenya; (b) has relevant knowledge and experience in a related field; (c) has at least five years' experience in management; and (d) satisfies the requirements of Chapter Six of the Constitution. (3) The Chief Executive Officer shall be an <i>ex officio</i> member of the Council but shall have no right to vote at any meeting of the Board. (4) The Chief Executive Officer shall— (a) subject to the general direction of the Board, be responsible for the day to day management of the Council; (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Council, the exercise, discharge and performance of the objectives, functions and duties of the Council, and the general administration of the Council; and (c) perform such other duties as may be assigned by the Board from time to time. (5) The Chief Executive Officer may be removed from office by

the Board in accordance with the terms and conditions of service for

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or behavior;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal under the terms and conditions of service.

(6) The Chief Executive Officer shall hold office for three years and shall be eligible for reappointment for one further term.

Staff of the Council.

32. (1) The Board shall develop and submit its organizational structure to the Public Service Commission for approval in accordance with Article 234 (2) (a) of the Constitution.

(2) The Board shall competitively recruit and appoint such other staff of the Council and on such term and conditions as the Board may, on the recommendation of the Public Service Commission, determine.

(3) The staff of the Council shall be paid such remuneration as may be determined by the Cabinet Secretary, upon the advice by the Salaries and Remuneration Commission.

(4) The recruitment and appointment of the staff of the Council shall take cognizance of regional, ethnic and gender balance including equal opportunities to persons with disabilities, youth, marginalized groups and ethnic and other minorities.

Common seal.

33. (1) The seal of the Council shall be such device as may be determined by the Board and shall be kept in the custody of the Chief Executive Officer.

(2) The affixing of the seal shall be by the signature of the Chief Executive Officer or any other officer authorized in that capacity by the Board.

(3) Any document purporting to be under the seal of the Council or issued on behalf of the Council shall be admissible in evidence in the absence of any proof to the contrary, and shall be deemed to be so executed or issued, as the case may be, without further proof.

Protection from personal liability.

34. Nothing done by a member of the Board or by any person working under the instructions of the Board shall, if done in good faith for the purpose of executing the powers, functions or duties of the Board under this or any other Act, render such member or officer personally liable for any action, claim or demand.

Liability of the

35. The provisions of section 34 shall not relieve the Council of

Council for damage. the liability to pay compensation or damages to any person for any injury to that person, their property or interests caused by the exercise of any power conferred by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

PART IV—FINANCIAL PROVISIONS

Funds of the Council. **36.** The funds of the Council shall consist of—

- L.N. 194/2018.
- (a) such monies as may be appropriated by Parliament for the purposes of the Council;
 - (b) such monies as may be disbursed from the Sports, Arts and Social Development Fund established under the Public Finance Management (Sports, Arts and Social Development Fund) regulations, 2018, for the purposes of the Council; and
 - (c) all monies from any other lawful source provided, donated or lent to the Council.

Financial year. **37.** The financial year of the council shall be the period of twelve months ending on the 30th of June in each year.

Annual estimates. **38.** The Annual estimates of the Board shall be prepared in accordance with the Public Finance Management Act, 2012.

No. 18 of 2012.

Accounts and audit. **39.** (1) The Board shall cause to be kept proper books of account of the income, expenditure, assets and liabilities of the Council.

No. 34 of 2015. (2) The accounts of the Council shall be audited and reported upon in accordance with the Public Audit Act, 2015.

Annual reports. **40.** (1) The Board shall, after the end of the financial year, prepare and submit a report of the operations of the Council for the immediately preceding year.

(2) The annual report shall contain in respect of the year to which it relates—

- (a) the financial statements of the Council;
- (b) a description of the activities of the Council including cultural properties that had been exported, recovered and cultural heritage that had been destroyed, and the database on culture, cultural heritage and cultural expressions;
- (c) such other information relating to the Council or its functions as the Board may consider appropriate;
- (d) any recommendations made by the Council to state departments or other person and the action taken;

- (e) any impediments to the achievements of the objects and functions under this Act or other written law; and
- (f) any other information relating to the Council's functions that the Board considers necessary.

(3) The Cabinet Secretary shall submit the report to the president and Parliament three months after the end of the year to which it relates.

(4) The annual report shall be published and publicized in such manner as the Board may determine.

PART V—OFFENCES AND PENALTIES

Offences.

41. (1) A person commits an offence if that person—

- (a) steals or is wrongfully in possession of a cultural property protected under this Act or under any other written law;
- (b) sells a cultural property protected under this Act or under any other written law without a permit or license;
- (c) transfers, without a permit or license, or traffics in a cultural property protected under this Act or under any other written law;
- (d) aids or abets another person to steal, sell or otherwise be wrongfully in possession of a cultural property protected under this Act or under any other written law;
- (e) commits forgery or fraud with the intent to have an article declared an article of cultural interest;
- (f) damages a cultural expression;
- (g) does not report imminent danger to a cultural expression;
- (h) fails to apply for a permit or a license to conduct an activity or development at a place that has a cultural expression or heritage;
- (i) exports a cultural expression without a permit or a license, or
- (j) removes or attempts to remove without authorization any cultural property.

(2) A person convicted of an offence under this section shall be liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

(3) The court may, in addition to any penalty it may impose under this section—

- (a) direct that any expenses incurred for the repair or replacement of a cultural object as a consequence of the commission of an offence under this section be paid by the offender;
- (b) order the restitution of a cultural property protected under this Act or under any other written law to its rightful owner; or
- (c) make an order for the forfeiture of the proceeds or profits from the commission of the offence.

Non-compliance with conditions of registration.

42. Any person whose property or association has been registered and who fails to comply with the conditions of registration under this Act commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months.

Undertaking research without a permit.

43. Any person who undertakes research under this Act without a research permit issued under this Act commits an offence and is liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding ten years.

Loaning without a permit.

44. A person, who loans a cultural property contrary to the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years.

Damage or destruction of inventoried cultural property.

45. Any person who intentionally damages or destroys an inventoried cultural property or artifact commits an offence and shall, on conviction, be liable to imprisonment for life.

Wrongful possession of cultural property.

46. A person who is found in possession of cultural property to which he or she has no lawful right commits an offence.

Counterfeiting and misrepresentation of cultural property.

47. Any person who—

- (a) produces an object or assists another person to produce an object with the intention of presenting it as a genuine cultural property; or
- (b) knowingly misrepresents an object to be a cultural property,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years.

Using images without consent.

48.(1) Any person who uses an image of a cultural property without the written prior informed consent of the owner of that

cultural property commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years.

(2) The burden of proof shall, under this section, lie on the person alleging to have obtained the written prior informed consent.

(3) The Cabinet Secretary shall take such measures as may be necessary to ensure payment for use of images of cultural property where such images have been or are being used without consent outside Kenya.

False or misleading information.

49. A person commits an offence if he or she knowingly provides the Council with false or misleading information and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

Willfully impeding or obstructing a person.

50. Any person who willfully obstructs or impedes any person in the exercise of any of the powers, or in the performance of any of the duties conferred or imposed upon him or her by this Act commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months.

PART VI—GENERAL PROVISIONS

Fees and levies to be published in the *Gazette*.

51. (1) Where this Act stipulates levies, charges or fees for any services or for use of facilities, a schedule of the levies, charges or fees shall be published in the *Gazette*.

(2) The schedule of charges shall come into force on the date specified therein, which shall be at least thirty days following publication in the *Gazette*.

General penalty.

52. A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

Transitional provisions.

53. (1) Any license or permit issued by the Cabinet Secretary in regard to a cultural object before the commencement of this Act shall continue to be valid as if it had been issued under this Act.

(2) Any inventory or register of culture and cultural heritage in existence before the commencement of this Act shall continue to be valid as if it had been established or kept under this Act.

(3) Any agreement or contract entered into between the Government and any other person regarding the protection and promotion of culture and the cultural heritage of communities shall continue to bind the parties as if the agreement or contract had been made under this Act.

(4) Any agreement or contract entered into by the Government with any other person regarding the protection or promotion of culture and the cultural heritage of communities before the commencement of this Act that contravenes any provision of this Act shall, on commencement of this Act, become null and void to the extent of that contravention.

Regulations.

54. (1) The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the the generality of subsection (1), the Cabinet Secretary may make regulations—

- (a) prescribing the information to be captured in the registers;
- (b) prescribing the forms under this Act;
- (c) prescribing the criteria for the identification of cultural property;
- (d) prescribing the manner in which the loaning of cultural property shall be undertaken;
- (e) prescribing the standards for the maintenance, presentation and storage of cultural objects;
- (f) prescribing compensation on use of community cultures and payment of royalties;
- (g) prescribing research relating to culture we need to capture this in a way that recognizes the role of the body in charge of research in Kenya; and
- (h) generally for the better carrying out of the purposes and provisions of this Act.

SCHEDULE

(section 27)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Tenure

1. The chairman or a member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment, subject to a maximum of three terms of office.

Vacancies in the Board

2. The chairman or a member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board of the Council without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding one hundred thousand shillings;
- (c) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
- (d) as violated the Constitution or any other law;
- (e) commits gross misconduct, whether in the performance of the member's or office-holder's functions or otherwise;
- (f) fails to declare to the Board a conflict of interest; or
- (g) is otherwise unable or unfit to discharge his functions.

Meetings of the Board

3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be five members including the chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Board at which he is present but in the chairperson's absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to such paragraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Procedure during meetings

4. Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Board

5. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities.

(2) The Board shall appoint the chairman of a committee established under subparagraph (1) from amongst its own members.

(3) The Board may, where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

Conflict of interest

6. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is in present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contractor other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine of one hundred thousand shillings, or to imprisonment for a term of six months, or to both.

Board may authorize another person to perform certain functions

7. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The Culture Bill, 2019, has been made to give effect to Article 11 of the Constitution as well as to provide for the promotion and protection of culture and cultural heritage of communities in Kenya. It is divided into six Parts and runs to 54 clauses and one Schedule.

Part I of the Bill (clauses 1 – 4) provides for preliminary matters including the interpretation of key terms; guiding principles of the Bill; and the object and purpose of the Bill.

Part II of the Bill (clauses 5 – 19) provides for the management of culture in Kenya and delineates the functions of both the national government and the county governments. It also

The Culture Bill, 2019

provides for the establishment of a cultural database, access to information relating to the management of culture in Kenya, compensation to individuals, groups or communities for the use of cultural properties, research into culture and cultural heritage and the registration of cultural properties. It also provides for the recognition and promotion of cultural expressions and indigenous technologies by public entities, the protection of cultural heritage and expressions, and the protection of endangered communities and cultures.

Part III of the Bill (clauses 20 – 35) provides for the establishment of the National Council for Culture, its membership, and powers. It also provides the establishment of register of culture and cultural heritage; access to information contained in the register; the refusal to register or the validity or cancellation of a registration; compensation for use of culture and cultural heritage; the recognition and promotion of culture and cultural heritage by public entities; the protection of cultural heritage and expressions; and the seizure and disposition of tangible cultural heritage.

Part II of the Bill also provides for the appointment of the Chief Executive Officer; the qualifications of appointment of the Chief Executive Officer; the staff of the Council; the common seal of the Council; the protection of members and staff of the Council from personal liability for the performance of the or functions or exercise of their powers under the Act; and the liability of the Council for damage caused by the performance of the or functions or exercise of their powers under the Act.

Part IV of the Bill (clauses 36 – 40) provides for the funds of the Council and other financial matters related to the Council including annual estimates; accounts and audit; the financial year of the Council; and the annual report of the Council.

Part V of the Bill (clauses 41 – 50) provides for offences and penalties in relation to culture, cultural heritage and cultural properties.

Part VI of the Bill (clauses 51 – 54) makes general provisions in relation to fees and charges, a general penalty, the power to make Regulations under the Act and transitional matters.

Dated the, 2019.

AMINA C. MOHAMED,
Cabinet Secretary for Sports, Culture and Heritage.